Arbitration

Verizon New England

And

IBEW, Locals 2321 and 2324

Gr: Center Closings

Award: June 3, 2014

Arbitration Panel: Roberta Golick, Esq., Chair
John Rowley, Business Manager, IBEW 2324
Joseph Santos, Labor Relations, Verizon

Appearances: For the Company
Arthur G. Telegen, Esq.
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For the Union
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The Issues

The parties agree that the issues are:

Did the Company violate the collective bargaining agreement in the manner outlined in the Union's pre-hearing brief?

If so, what shall be the remedy?

The Union's pre-hearing brief alleges that:

A. The Company violated Article X, Section 3 of the 2012 MOU by directing all Massachusetts calls out of state;

B. The Company violated Article XX/Attachment 3 of the 2012 MOU (as modified by the September 11, 2012, Letter Agreements) by failing to complete the required hiring/bidding in Springfield and by immediately closing the centers at issue after purportedly completing the initial staffing; and

C. The Company violated Article G26 of the collective bargaining agreement by failing to give a six-month notice of this change in organization.

The 2012 Memorandum of Understanding

Article X Sharing of Calls Among Centers[1]

1. The Companies may implement and expand upon call routing capabilities allowing for the routine transfer and/or routing of calls between and among centers in any location performing like functions, on a next available agent, balanced load or any other basis determined by the Companies, consistent with the terms of this Article X – Sharing of Calls Among Centers. For example…[a] routine routing of a call from an Enhanced Verizon Resolution Center ("EVRC") to a Fiber Solutions Center ("FSC") is another example of a routing between centers performing like functions, as is a routine routing of a call from an FSC to an EVRC if qualified employees are available at the EVRC to handle the call…

…

3. Except as provided in this provision, there will be no limitations, geographic or otherwise, on the Companies' right to transfer and route calls between and among the Centers, contractor locations and/or individuals working at home, performing like functions. Such calls…subject to this 2012 MOU shall first be routed to available union-represented employees at like-function call centers located in the state in which the calls originate. If no union-represented employees at like-function call centers located in the state in which the calls originate are available to handle calls, the calls will be routed to other union-represented employees in the Northeast. If no union-represented employees in the Northeast are available to handle calls, the calls will be routed to union-represented employees in Mid-Atlantic (except the Pennsylvania EVRC). If no union-represented employees in Mid-Atlantic are available to handle calls, the calls will be routed to union-represented employees in the United States in a call center outside of the Northeast or Mid-Atlantic footprint. If no union-represented employees in the United States in a call center outside of the Northeast or Mid-Atlantic footprint are available to handle calls, the calls will be routed to contractors.

…

6. For the time period of January 1, 2013 to December 31, 2013, EVRCs and FSCs (collectively referred to in this provision as "Tech Support Centers") in the New York/New England footprint will together handle an aggregate regional call volume that is equivalent to at least 59% of all fiber and copper calls…originating from New York/New England footprint customers between January 1, 2013 and December 31, 2013 that are routed through the ERS [electronic routing system] to Tech Support Centers, contractor locations and/or individuals working at home.

12. For purposes of this article, a calculation of "aggregate regional call volume," shall include all calls, regardless of geographic origin, handled by applicable Centers and/or employees working at home

[1] This agreement covers many different centers – CSSCs, BSBCs, FSCs, EVRCs, Multilingual Sales and Service Centers, and any other or future center designed to combine or integrate the work of these existing centers. This case involves just the two EVRCs and FSC that existed in New England at the beginning of the 2012 MOU term.

during the applicable time period, and "aggregate regional call volume percentage" shall include calls handled by both IBEW and CWA-represented employees in the New York/New England footprint… Nothing in this provision should be construed or interpreted as a guarantee that a certain amount of work will be performed in any single Center or location.

…

19. All New England CSAs will be upgraded to the FCSA position after passing the second training module (data)…

…

22. During the term of this 2012 MOU the Company will maintain a BSBC [Business Sales and Billing Centers] presence in New England…

ATTACHMENT 3

Additional Center Jobs Agreement

…

Whereas, the Companies and the Unions are parties to various collective bargaining agreements ("Labor Agreements");

…

Whereas, the Companies employ Bargaining Unit employees in, among others…Fiber Solutions Centers ("FSC's), and Enhanced Verizon Resolution Centers ("EVRC's)…(collectively…referred to herein as "Centers");

…

Therefore, for good and valuable consideration, the parties agree as follows:

1. The Companies agree that, in return for the Unions' agreement to the Companies' current Sharing of Calls Among Centers proposal, they will add 300 regular full-time, newly hired employees ("Additional Hires") during the term of the successor contract to the 2008 Labor Agreements, into one or more Centers that employ Bargaining Unit employees covered by the Labor Agreements, contingent upon obtaining sufficient qualified and successfully trained candidates.

a. The Companies will hire 125 of the Additional Hires into positions in Sales and Service Centers located in NY/NE.

b. The Companies will hire 175 of the Additional Hires into the Fiber Customer Support Analyst ("FCSA") position in FSCs and EVRCs located in NY/NE.

c. The 300 Additional Hires requirement is a single, aggregate number of Additional Hires to be hired pursuant to this Agreement, whether represented by CWA or the IBEW. The Companies will have no obligation pursuant to this Agreement to either maintain any particular headcount or backfill in the event that Additional Hires leave employment or transfer from the Centers.

d. Initial staffing of the 175 Additional Hires for the EVRCs and FSCs will be applied proportionately to each Union Local based on the current number of employees in the EVRCs and FSCs in each Local. In addition, initial staffing of the 125 Additional Hires for

the Sales and Service Centers will be applied proportionately based on the current number of employees in the Sales and Service Centers in each Local. Initial staffing placement may be adjusted if there is insufficient space to accommodate the additional headcount.

…

The Collective Bargaining Agreement

Article G26 Technology Change Committee

…

G26.02 The purpose of the Committee is to provide for discussion of major technological changes (including changes in equipment, organization or methods of operation) which may affect employees represented by the Union. The Company will notify the Union at least six (6) months in advance of planned major technological changes. Meetings of the Committee will be held as soon thereafter as can be mutually arranged. At such meetings, the Company will advise the Union of its plans with respect to the introduction of such changes and will familiarize the Union with the progress being made.

G26.03 The impact and effect of such changes on the employees shall be appropriate matters for discussion. The Company will discuss with the Union:

a. What steps might be taken to offer employment to employees affected:
   1. In the same locality or other localities in jobs which may be available in occupations covered by the collective bargaining agreement between the parties; and
   2. In other occupations of the Company not covered by the collective bargaining agreement.

b. The applicability of various Company programs and contract provisions relating to force adjustment plans and procedures, including Income Protection Plan, Reassignment Pay Protection Plan, retirement, transfer procedures and the like.

c. The feasibility of job displacement training programs, as provided for in Article G22 (“Training and Retraining Programs”)

Overview

This case involves claims by two IBEW Union Locals – Local 2321 and Local 2324 – that Verizon violated the Call Sharing Agreement contained within the 2012 Memorandum of Agreement and the Additional Center Jobs Agreement (Attachment 3 of the MOU) when it announced its plan to close the Andover and Springfield Enhanced Verizon Resolution Centers (EVRCs) and to consolidate the work into the Fiber Solutions Center (FSC) in Providence, Rhode Island. The Union contends, as well, that Verizon violated Article G26 of the collective bargaining agreement by failing to give a six-month notice of the change in organization.

At the heart of the case is the question whether the 2012 "Call Sharing" Agreement and the Additional Center Jobs Agreement precluded the Company from taking its announced step.[2] There is no *express* prohibition against closing the Andover and Springfield EVRCs in either of the two documents, but there are requirements in the documents that, in the Union's view, can only be fulfilled by the Company's maintaining its EVRCs within the geographic areas of the two Union Locals.

Background

At 11:59 p.m. on August 6, 2011, the 2008-2011 collective bargaining agreement between Verizon New England and the eight New England IBEW Locals expired. Without a successor agreement in place, the IBEW Locals in New England went on strike, as did the Company's IBEW Locals in the New York region, along with the CWA Locals in both regions. The strike ended on August 22, 2011, with an agreement to extend the terms of the expired collective bargaining agreements while the parties returned to the bargaining table. Thereafter, the parties resumed bargaining in a "regional" format, which included the IBEW and CWA Locals in New England and New York together at the table. At some point later, the New

[2] The announcement was in January 2013. The actual closures of Andover and Springfield occurred in late summer 2013. This arbitration commenced in July 2013 in anticipation of the closures.

York/New England regional joint bargaining merged with the bargaining involving the Mid-Atlantic region.

Verizon New England provides technical support for its customers. In the 2011 time frame, this support was provided to Verizon's "copper" customers by Customer Service Assistants (CSAs) in the Springfield and Andover EVRCs. Support was provided to Verizon's "fiber" customers by Fiber Customer Service Assistants (FCSAs) in the Providence FSC.[3] Both CSAs and FCSAs are covered by the Plant provisions of the collective bargaining agreement. Employees at the Springfield EVRC were represented by IBEW Local 2324. Employees at the Andover EVRC were represented by IBEW Local 2321. Employees at the Providence FSC are represented by IBEW Local 2323.

In June 2011, even before the strike, the Company was proposing to the team of New York/New England negotiators a call sharing system that would allow Verizon to route technical support calls with "no limitations, geographic or otherwise" between and among Centers, contractor locations, and individuals working at home performing like functions."[4] Verizon Vice President Lou Sigillo explained the plan to the Union negotiators:[5]

> Calls first go to the local area then to internal groups, then contractor groups. We would look at the entire Verizon area first. It's better to keep calls local. (Jx14)

[3] To transition from a CSA to an FCSA requires additional training on fiber-related products and services.
[4] Included under the umbrella of call sharing and addressed specifically in the many proposals exchanged was the matter of sharing of Sales Center calls, not in issue here.
[5] The parties' bargaining proposals are in the record as Joint Exhibit 12. The transcribed minutes of the bargaining sessions are in the record as Joint Exhibit 14. To distinguish between actual proposals and statements made across the table, I will include references to "Jx12" and "Jx14" respectively.

The Unions presented their first counter-proposal on call sharing on October 3, 2011, after the strike. They rejected Verizon's "no limitations" language, and proposed a detailed process for the routing of calls.[6] Among the terms of the Unions' October 3 proposal was the following:

> If the representatives in Centers in New York and New England are unavailable to handle a call originating in New York and New England Centers, the call will be routed to the next available representative in the following regions based on the priority order set forth below:
>
> First, if there is not an available representative in CWA/IBEW Centers in New York, calls will be routed to the next available representative in CWA/IBEW Centers New England and if there is not an available representative in CWA/IBEW Centers in New England, calls will be routed to the next available representative in CWA/IBEW Centers in New York…[7] (Jx12)

This CWA/IBEW proposal also sought return to the bargaining units of the technical support work performed by all vendor and/or non-bargaining unit employees; and, among other guarantees, one that during the term of the MOUs the staffing levels at each Center would not be decreased; another that all Centers currently in operation in New York and New England would remain in operation through the term of the MOUs; and a third that there would be no diminishment in the hours of operation of any current Center.

On October 11, 2011, the Company rejected the job protection provisions proposed by the Unions and countered with the following routing system:

> Calls subject to this Agreement…shall first be routed to available union-represented employees at call centers located in the state in which the calls originate. If those employees are not available to answer the calls, they will be routed to other union-represented employees at like call centers outside the state; and if union-represented employees at other like call centers are not available to answer those calls, they may be routed to contractors. (Jx12)

[6] The Unions resisted the Company's proposed call sharing arrangement, but entertained it in package proposals with various demands of their own.

[7] After the New York and New England regions, the Unions proposed that calls be routed to New Jersey, then Pennsylvania/Delaware/Potomac, then Florida, then California, then Texas.

The Company also offered an "Additional Center Jobs Agreement"[8] in return for the Unions' agreement to certain New Hire Provisions and the Sharing of Calls Among Centers proposal. The Additional Center Jobs Agreement would include the addition of 500 regular full-time, newly hired employees ("Additional Hires") during the term of the successor contract to the 2008 Labor Agreements, into one or more Centers that employ Bargaining Unit employees covered by the Labor Agreements, contingent upon obtaining sufficient qualified and successfully trained candidates. This proposal included a guarantee that approximately 12% of the Additional Hires would be into FSC positions located in New York/New England (with the proviso that "The Companies will have no obligation pursuant to this Agreement to either maintain any particular headcount or backfill in the event that Additional Hires leave employment or transfer from the Centers").

At bargaining on October 11, Lou Sigillo stated:

> You asked for a certain path for routing the calls. What you see here is our version of that. First the call would go to the local area, then elsewhere in the country and finally to contractors…

Verizon Executive Director Patrick Prindeville added:

> I want to make clear that the routing language does not mean that if there's a state without a call center, we would be building them. It's existing centers.

On January 3, 2012, the Unions' routing proposal demanded, simply:

> Call flow: NY to NE or NE to NY, Mid-Atlantic, West

The January 3 proposal also sought protection from movement of work from EVRC and FSC centers for the duration of the contract. On January 10, the Company rejected the Unions' proposal and "re-proposed" its October 11 proposal unchanged, but with the addition of a limitation on the percentage of customer calls that could be contracted out to vendors.

[8] This proposed Additional Center Jobs Agreement also included the Mid-Atlantic region.

In a discussion on January 12 of calls going to vendors, Mr. Prindeville stated:

> Before any calls go to a vendor, they first go locally. If no one is available it then goes to the internal centers and lastly to the vendor.

When a Union negotiator asked what 'no one available' meant, Lou Sigillo answered:

> Means everyone has a call. If everyone locally is occupied it would start the progression down the list. We hold the call at the cloud level then distribute it accordingly.

On January 13, 2012, the Unions expressed concern about whether the Company would maintain the status quo were there to be a call sharing agreement, for the Company had repeatedly rejected prior proposals where the Unions were seeking guarantees that there would be no movement of work from existing centers and no change of hours of operation. IBEW Spokesperson Myles Calvey asked:

Calvey:	Is it safe to say that a center open today til 9pm will be remaining open til 9pm? Would it stay the same?
Sigillo:	There is no language that addresses that but there's no plan to change it. Those are not our intentions.
Keith Edwards, CWA 1105 President:	Our proposal had language to protect the schedules.
Kim Young, Exec. VP CWA 1104:	Could your intentions change?
Prindeville:	Yes.

Later at the same meeting:

Elisa Riordan, Area Director for CWA:	What would stop you from closing the FSC in Rhode Island? You could move the work around the country. There's nothing to stop that.
Joe Santos, VZ Labor Relations Director:	No, not in the language, in the business model, yes.
Riordan:	Business models change all the time. We want language.
Sigillo:	It would be silly. It would cost us money.
Riordan:	Silly decisions get made. That's a concern that was addressed in our proposal. There's no VCCD work in New York. You could move work in and other work out.

Sigillo:	Technically, yes, but it's an expense issue for us.

Over the next several months, nothing of major significance changed in either side's position. The Unions maintained their position on call routing with job protections; the Company maintained its position. The Company provided verbal assurances that its view of the routing essentially comported with the Unions', using terms in discussions like "home region first," "look home first," "local area first." The Company also responded to concerns about closing centers or changing hours of operation with representations that, "It's super expensive for us to move departments around," and "Our current proposal doesn't have limitations on scheduling. I think Lou [Sigillo] said that there is no grand plan to close centers or adjust hours."

In the Company's June 28, 2012 proposal, it modified the language of the "Additional Center Jobs Agreement" to reflect that of the now-proposed 300 Additional Hires, 175 of them would be hired into positions in FSCs located in NY/New England. The parties discussed it:

John Rowley, Bus. Mgr. L. 2324:	Where would you hire?
Santos:	We would just hire into the FCSA title.
Rowley:	So you would hire FCSAs into the EVRCs?
Santos:	This proposal does not address where we hire. It is likely we would hire in the FSC. However, there could be a large EVRC and they have the space, we could hire FCSAs there.
Edwards:	When we met we talked about staffing. We talked about a 70/30 split, CWA and IBEW, broken down by location, broken down by percentages, how many people, etc.
Santos:	We have some flexibility to work those issues out.
Edwards:	That still applies?

Santos:	It does.
Larry Marcus, VZ VP:	So we understand, you have our proposal. We are seeking flexibility with the hiring. What you just laid out, we're not looking for it to be that precise. We are open to discuss staffing, but I don't want you walking away from this table thinking that you'll have precise language.
Edwards:	It needs to be that precise.
Marcus:	We do not want to put something precise on the table. You will need to propose it.

In July 2012, the negotiations moved from New York to Washington D.C. where the parties had mediation assistance from the Federal Mediation and Conciliation Service. On July 26, the Unions continued to hold to their routing path, but they added a new paragraph to the Company's Additional Center Jobs Agreement:

> Initial staffing for new jobs that are the subject of this agreement will be distributed to all centers on a proportionate basis based on the current levels of staffing in the centers. (Jx12)

The Company countered with language adopting the concept:

> Initial staffing of the 175 Additional Hires for the EVRCs and FSCs will be applied proportionately to each Union Local based on the current number of employees in the EVRCs and FSCs in each Local…Initial staffing placement may be adjusted if there is insufficient space to accommodate the additional headcount. (Jx12)

On the same date, the Company's routing language changed. Whereas since October 2011 the proposal had been:

> Such calls…shall first be routed to available union-represented employees at like function call centers located in the state in which the calls originate. If those employees are not available to answer the calls, they will be routed to other union-represented employees at like-function call centers outside the state; and if union-represented employees at other like-function call centers are not available to answer those calls, they may be routed to contractors…

on July 26, the Company proposed:

> Such calls…shall first be routed to available union-represented employees at like-function call centers located in the state in which the calls originate. If no union-represented employees at like function call centers in the state in which the calls originate are available to answer the calls, the calls will be routed to other union-represented employees in the Northeast. If no union-represented employees in the Northeast are available to answer calls, the calls will be routed to union-represented employees in Mid-Atlantic (except the Pennsylvania EVRC). If no union-represented employees in Mid-Atlantic are available to answer calls, the calls will be routed to union-represented employees in the United States in a call center outside of the Northeast or Mid-Atlantic footprint. If no union-represented employees in the United States are available to answer calls, the calls will be routed to contractors.

The Company made minor language changes to the above on July 29 (e.g., changed the word "answer" to "handle") to which the Unions agreed, and on July 30, 2012, the Call Sharing Agreement and the Additional Center Jobs Agreement were put to rest.

In September 2012, to resolve issues surrounding a Company-declared surplus in the Splice-Service Technicians (SST) and Outside Plant Technicians (OPT) titles, the parties agreed that in place of (or prior to) initial staffing as outlined in the Additional Center Jobs Agreement, the Company would conduct a canvass and qualified employees subject to layoff would be permitted to bid into those positions.

Accordingly, by January 2013, the positions that were to be filled in Local 2321 pursuant to the "proportionate" staffing language of the Additional Center Jobs Agreement (18) were filled through the bidding process. In Local 2324, some, but not all the positions that would have been filled based on the staffing language of the Additional Center Jobs Agreement (8) were, in fact, filled.

On January 14, 2013, the date the canvassed employees were to report to Andover and Springfield, the Company announced that it had decided to close the EVRCs in the two Massachusetts locations and move all the work and employees to the FSC in Providence, Rhode Island. The matter had been discussed among representatives of management in early December, 2012, and by January 8, 2012, the decision was made to close the two centers.

The IBEW Union grieved, and the dispute progressed, unresolved, to arbitration.

Positions of the Parties

The Union contends that this is a simple case. The Company made a deal as part of a *quid pro quo* to increase staffing in each of the Local Union areas covered by the Call Sharing Agreement on a proportionate basis. The closure of the Andover and Springfield EVRCs violated both the letter and the spirit of the Additional Jobs Agreement. The language of the Additional Jobs Agreement not only required the Company to staff the EVRCs, but also to retain the additional hires unless they left employment or transferred from the centers. The closure of Andover and Springfield also violated the Call Sharing Agreement, the Union continues, in that that agreement requires that calls first be routed to available employees "in the state" where the calls originate. By moving all Massachusetts calls to Rhode Island, the Company thwarted its own proposal – that it insisted on for a year -- to have calls handled in the originating state.

Finally, the Union continues, the Company violated the Tech Change provisions of Article G26 of the collective bargaining agreement by failing to give the required six-month notification of the office relocation and by failing to engage in the contractually required collaboration process. The provision contains a much broader requirement for finding available jobs for affected bargaining unit members than the Company applied in this case.

The Union seeks as a remedy an order that the Company return to the status quo ante and make the affected employees whole, unless the parties mutually agree to another approach to resolve the violations.

The Company contends that there is nothing in any of the agreements the Union points to that restricts Verizon from closing centers, including the ones at issue here. Neither the "routing" nor the "initial staffing" provisions diminish management's unfettered right in that regard, and there were no commitments made during bargaining to keep any center open. The Unions tried repeatedly to secure that protection, and the Company rejected that demand each and every time.

As for the reference to the word "state" in the routing process, the Union reads too much into it, and fails to take into account the consequences of its literal construction. In any event, irrespective of the meaning attached to the phraseology of the routing provision, there is nothing there to prohibit the Company from closing centers.

The "initial staffing" provision also fails to satisfy the Union's goal to preclude the Company from exercising its rights. Staffing is dependent on available space and a closed center is not available. Further, it makes no sense for the Union to suggest that the center must stay open until it is staffed, at which point, presumably, the center could be closed.

Regarding the Union's claim under Article G26 of the contract, the Company disagrees that closing a call center is a technological change that triggers Article G26, but even if it does, the Company voluntarily complied with the substantive elements of G26 to minimize the hardship suffered by affected individuals.

The Company asks that the grievance be dismissed.

Discussion

A few preliminary observations are warranted, taken from the record as a whole.

First, the Company never promised in writing or in the year of bargaining table discussions with the IBEW and CWA Unions that it would not close the EVRCs or FSCs that existed at the time.[9] To the contrary, the Unions explicitly proposed again and again and again that Verizon provide guarantees such as no movement of work from the existing centers and no schedule reductions in the existing centers, and the Company rebuffed each and every such attempt. On the other hand, the Company did say again and again and again that it had no plan to close existing centers, that it was a very expensive proposition to do so, and that the business model did not contemplate such action. Those representations appear to have been genuine; otherwise, it would have been imprudent to promise staffing of additional hires proportionately based on current numbers in existing centers in each Local.

Also, despite a year of complex post-strike negotiations and dozens of proposals exchanged and a four-pound binder of bargaining notes, there is remarkably little by way of bargaining history on the specific issues at hand. Nowhere is there a discussion about why the Company used the word "state" in its written proposals while the Union used "New England." Nowhere did anyone ask across the table, "What's your problem with the way we worded this?" While the Company contends that this is because everyone understood that they were talking on a regional basis (which appears to be accurate), it may also be the case that the Unions' main focus in these discussions of call sharing was to have the work performed by their bargaining unit members as opposed to contractors. The discussions were not about Massachusetts versus Rhode Island. They were not about New England versus New York. They were not even about Northeast versus other bargaining unit members in the Verizon footprint. Chiefly, they

[9] My jurisdiction in this case is solely over the IBEW grievance. Any commentary/analysis contained in this discussion that references the CWA is not intended to govern CWA in any fashion. When I refer to "Unions" I am referring to the combined Unions who participated in the negotiations. When I refer to "Union" I am referring to the IBEW.

were about 'us' versus 'them,' union-represented employees against non-represented vendors. From a broad perspective – before drilling down to the issues that brought us here – the quid pro quo was clear: call sharing in exchange for 300 additional hires in the aggregate into positions in New England and New York. Contractors were pushed further to the bottom of the food chain.[10]

"State"

The disputed language of the MOU is at first perplexing. For a year, the Union held firm to its vision of an acceptable routing system that began with "New England" and extended next to "New York," whereas the Company's position was "call centers located in the state in which the calls originate," and next to "call centers outside the state." The final agreement says "call centers located in the state in which the calls originate," and next to "the Northeast." None of these terms – New England, New York, state, Northeast – is particularly obscure or unfamiliar to the parties.

Accordingly, an analysis of the language of the MOU *could* (but won't) go as follows: The words are not ambiguous; the negotiators were all smart, seasoned professionals; the Company had every opportunity to see that the Unions used the term "New England," yet it responded time and again with the term "state"; the Company knew that Verizon New England covered two states; it's the Company's language, so if it meant something other than "state," it should have said so. That analysis is certainly defensible, and follows time-honored principles of language interpretation, *but* it ignores one other important principle of language interpretation, which is to avoid harsh or absurd results. And importantly, but mostly ironically, in this case, to adopt the construction of the language here urged by the Union would bring the harsh or absurd results to the Union's shoulders, not the Company's.

[10] The final call sharing agreement contained a guarantee of aggregate regional call volume to be handled by Tech Support Centers for the term of the MOU and penalties non-compliance.

Let us leave aside, for a bit, the factual underpinning of this case – i.e. that the Company consolidated the Springfield and Andover EVRCs into the Providence FSC[11] – and assume that the centers in Massachusetts remained open. Would the Union have wanted the language to be applied *literally* so that calls would be routed first to Massachusetts centers and if no one was available to handle the call, to go next to the Northeast? The Northeast includes Rhode Island, but it also includes New York. Surely, the Union would have wanted (and reasonably expected) Rhode Island to have priority over New York. Not that any proof of that self-evident proposition is necessary, but IBEW's adherence until the end of negotiations to its New England first/New York second routing proposal leaves no possible doubt.

Review of the bargaining format, coupled with what was and, more to the point, what was not said at the bargaining tables compels the finding that the reference to the word "state" in the parties' final Call Sharing Agreement was always understood by everyone to refer to either the geographic territory of New York, or the geographic territory of New England. Recall, IBEW and CWA were negotiating as a team. Comprehensive proposals handed out by the Company were individualized insofar as the headings of the documents were concerned, but were otherwise the same. And when the parties discussed them, they simply chose one version to work from. On October 11, for example, Mr. Prindeville said at the start of the bargaining session, "I'd like to work off the New York MOU. I don't think there will be a great deal of difference in what we'll be discussing between it and the New England and 2213 MOUs." And though it made linguistic sense that in the New York proposal the Company had used the word "state" instead of region, there was apparently no significance attached to it insofar as New England was concerned. That in a year of bargaining all table discussion addressed the "local area" without one word about Verizon New England covering two separate states is telling. More so is the fact that neither Verizon nor the Union evinced an iota of intent, wish or acquiescence to carve up New

[11] There is no dispute here that EVRCs and FSCs perform "like functions." This is confirmed in Paragraph 1 of the call sharing agreement.

England for call routing purposes. The final exchanges that led to the agreement on call sharing reveal that as the parties approached closure on the language, the word "state" had no intrinsic importance.

Union proposal 51-6 on July 26, 2012 was a draft MOU to be between the Verizon companies and the CWA. There is a notation on the proposal that it was intended to have the same terms cover IBEW North to the extent applicable. This proposal contains the very detailed routing system that the Unions had been seeking all along: Calls originating in New York would go next to New England, then to the mid-Atlantic footprint, then to union-represented employees outside the mid-Atlantic footprint, then to contractors in the U.S. Calls originating in New England would go next to New York, and so on. Verizon's counter-proposal on the same date is also in CWA mode, with the notation that the terms are applicable to IBEW North. It is in this proposal that Verizon – finally – agreed in sum and substance to the CWA-drafted proposal. It is in this proposal that Verizon accepted the path applicable to at least CWA: the state (New York region is all one state); the Northeast (i.e. New England); the Mid-Atlantic,[12] union-represented employees outside the Northeast and Mid-Atlantic, then contractors.[13] What the Company did, however, is synthesize the rather lengthy (and for the most part repetitious) routing paths – New York to New England, and vice-versa – contained in CWA's proposal into one intended to cover both the CWA and the IBEW Unions. That this was a response that appears to be to CWA[14] (though unquestionably intended to apply to IBEW) further explains the apparently careless though innocuous use of the word "state" instead of region.

[12] There is an exclusion for Pennsylvania not germane here.
[13] The Unions proposed contractors "in the United States." The Company's response and final agreement simply says "contractors."
[14] In New England, CWA represents employees in the Consumer Sales and Service Centers, all of which are in Massachusetts.

This is a very long way of saying that the Board does not, in the first instance, attribute any deliberative purpose to the use of the term "state" in the routing path of the call sharing agreement, and while one might argue that for better or worse, that's the term the Company used, we note that the "worse," in this case would have been "worse" for the Union had centers stayed open in both New England states.

But the two EVRC centers in Massachusetts *did* close, so let us consider whether the use of the word "state"– inadvertently or otherwise – in the final draft of the call sharing agreement compels or at least supports a finding that Verizon violated the MOU by moving the work to Providence. Accepting for purposes of discussion only that "state" in the context of the New England agreement means Massachusetts or Rhode Island, but not both simultaneously, the Board is not persuaded that the language can be construed to require the preservation of the Massachusetts EVRCs for the term of the MOU. There was nothing subtle about Verizon's repeated refusal to entertain the Unions' efforts to extract protections for the work and people and schedules that might be affected by a call sharing arrangement. Though it insisted that it had no plan to close centers, Verizon was opposed to the notion of status quo guarantees. The Company had been implementing what it would describe as business efficiencies or business necessities for years and its rejection of the Unions' protective proposals was unequivocal. In the face of this absolute and unconcealed position, the argument that the word "state" in the routing provision required Verizon to insulate the Springfield and Andover EVRCs from closure asks too much of this fragile reference. Not to be ignored, moreover, is the fact that at the eleventh hour the Company consented to maintain a Business Sales and Business Center presence in New England for the term of the 2012 MOU, while specifically declining to make the same commitment with respect to the EVRCs or FSCs.

In the final analysis, reliance on the word "state" appears to be an intriguing but ultimately unrewarding journey through the development of contract language. Would we not be here anyway if Verizon simply closed one EVRC in Massachusetts and not the other? Would we not be here anyway if Verizon closed the EVRCs in Local 2321 and Local 2324 and moved the work and people someplace else in Massachusetts? This is a grievance that is fundamentally about the disruption to bargaining unit members' lives when their jobs moved eighty miles away and the loss of work for individual Union Locals within the same bargaining unit. If there is a breach of the MOU, it is not because the Company used the word "state" when it should have said "New England."

Additional Center Jobs Agreement

With respect to this document, the parties do not disagree about the meaning of the language. No one questions or denies that the "quid pro quo" reached at bargaining was additional center jobs in return for the call sharing agreement. Specific to this dispute, Verizon promised that "175 of the Additional Hires" would be into FCSA positions in FSCs and EVRCs located in New England and New York; and that the Additional Hires requirement is a single, aggregate number whether represented by CWA or the IBEW. Central to the current disagreement are the commitments that:

> The 300 Additional Hires requirement is a single, aggregate number of Additional Hires to be hired pursuant to this Agreement, whether represented by CWA or the IBEW. The Companies will have no obligation pursuant to this Agreement to either maintain any particular headcount or backfill in the event that Additional Hires leave employment or transfer from the Centers; and
>
> Initial staffing of the 175 Additional Hires for the EVRCs and FSCs will be applied proportionately to each Union Local based on the current number of employees in the EVRCs and FSCs in each Local…Initial staffing placement may be adjusted if there is insufficient space to accommodate the additional headcount.

At issue, of course, is whether the Company's closure of the Andover and Springfield EVRCs breached the promises the Company made in the Additional Center Jobs Agreement.

At the outset, the Board is unpersuaded by two allegedly dispositive arguments – one by the Company and one by the Union. The Company points to the "insufficient space" language above and declares that a closed center simply is not available. That contention, while obviously accurate on a theoretical level, cannot relieve Verizon from its promises. For its part, the Union points to the "no obligation" language above and contends that in agreeing that Verizon need not maintain any particular headcount or backfill if Additional Hires leave employment on their own, the parties made clear that Verizon cannot *itself* create the diminished headcount. The Board views that assertion as wishful thinking. In context, that proviso is simply a clarification lest anyone would argue otherwise in the future.

The language of the Additional Center Jobs Agreement does, however, present a conundrum. While it is manifest that the Company did not promise that it would keep the EVRCs open in Andover and Springfield for any period of time, it did repeatedly reassure the Union negotiators at the table that it had no plan to close them, and consistent with that expectation, Verizon agreed that initial staffing for the EVRCs and FSCs would be applied proportionately to each Union Local based on the current number of employees in the EVRCs and FSCs in each Local. That final promise was not mere arithmetic. As the bargaining history shows, the Locals voiced their concerns about *where* the Company might do this hiring[15] and also about how they would be able to get the agreement ratified without protections for their members. To appease the Unions' stated concerns that they needed "precise language" in this area, the Company agreed to the formula that appears in the 2012 MOU.

The question, then, is whether it is sufficient for purposes of satisfying the Company's obligation in that regard that by January 2013, when the announcement of the closings was communicated to the Union,

[15] They were largely concerned that Verizon might hire in areas where labor was cheaper.

that the majority of the Additional Hiring was in place.[16] We believe not. Not because some small number of positions were still to be filled, but because the decision to close the EVRCs when the ink was barely dry on the agreement, and before the promised positions for the Locals even became a reality, dislodged the foundation upon which the quid pro quo was ultimately reached. Based on the language and the discussions at bargaining, the Union Locals at issue here could reasonably infer that going forward, their centers would still be in business and the headcount would in fact be increased proportionately.[17] Yet, on January 14, the day of the announcement and the day the employees were to report to Andover and Springfield, the message was essentially "Welcome to the Local. Don't unpack."

As the record indicates, this was not a situation where a change of circumstances prompted this unanticipated yet suddenly necessary change of plans. Rather, emails exchanges in December 2012 between two management representatives who did not participate in the 2012 MOU reveal private thoughts about the wisdom of closing Springfield, ("By moving them I would expect the senior folks -- associates & management -- to retire…"), the opportunity to "darken the space," and the advisability of "striking while the iron is hot." Within a week, the discussion was ramped up to consolidate centers in New England to one physical location. The impetus was one part "significant recurring savings from attrition (associates leaving vs moving)…" and one part "management HC savings."

The conundrum, then, is how to reconcile the Company's overall right to close centers with its detailed promise to apply initial staffing of the new hires for the EVRCs and FSCs "proportionately to each Union Local based on the current number of employees in the EVRCs and FSCs in each Local." In that regard, the parties do agree on one thing: As Verizon put it, "Nothing in the parties' negotiations suggested that

[16] Because of the subsequent agreement to modify the process to allow for bidding into Andover and Springfield from the "surplussed" SSTs and OPTs, the quota was met in Andover and was close to being met in Springfield.
[17] Calculations performed after the agreement was reached predicted 18 new hires in Andover and 8 in Springfield.

they were creating such a counterintuitive system, where the Company would earn the right to close a Center by first staffing it." Or, as the Union wrote, "It is the height of absurdity for the Company to assert that it satisfies its obligations by adding headcount and then immediately pulling that headcount away."

The Board cannot lay out a prescription of what is reasonable when written promises based on facially reliable representations made in the bargaining process come up against overarching and non-relinquished management rights. Each instance will have its own complex web of competing circumstances. The Marlboro closing, which the Company advanced as proof that the 2012 MOU offered no guarantees against centers closing, is significantly different from the EVRC closings at issue here.[18] It may be that the Union accepted that plan without challenge, though the Union here states that the details of the Additional Hiring that would have occurred in Marlboro are still unsettled. It may be that some mutually agreeable arrangement is being forged between the affected Locals. It may be that employees being relocated thirty miles from Marlboro to Lowell aren't as aggrieved as employees being relocated seventy-five or eighty-five miles (one way) to Providence from Andover and Springfield. And the Marlboro dislocation did not involve employees who had just completed a complicated bidding process that the Union and the Company had jointly engineered for them. The Union's apparent failure to protest the Marlboro closing may support the proposition (in which we concur) that the Company retains the right to close centers, but it does not demonstrate that the closures *in this case* were either reasonable or unchallengeable.

[18] The Company announced shortly after the parties reached their tentative agreement that it intended to close the Marlboro BSBC. At a meeting to discuss the Company's future plans, the Union did not suggest that the Marlboro closing or future closings would violate the call routing or additional center jobs agreements.

The Board agrees with the Union here that the announced closure of the Massachusetts EVRCs on January 14 was not reasonable under the circumstances, for it undercut the very "quid" for which the Union acceded to the "quo."

But that is not the end of the analysis, because, as we know, the centers did not actually close for another six or seven months. Which brings us to the G26 issue.

G26

It is a little incongruous for the Union to argue that the Company violated the 2012 MOU by closing the EVRCs, period, while at the same time complain that it did not receive appropriate G26 notice. Be that as it may, the record evidence does not establish that Article G26 – addressing technological change – was triggered in this matter. But to the extent the same general principles may be said to apply (i.e. the mutual desirability of conferring to minimize hardships to affected individuals), the record indicates that Verizon did, in fact, exert efforts to work with the Locals. On February 1, Labor Relations Director Joseph Santos wrote to IBEW Union Local Business Managers:

> As to G26, while the Company does not believe these relocations and transfers are "Technological Changes," we would be glad to meet with you and discuss the items suggested by the Technological change article such as; what steps might be taken to offer employment to employees affected, the applicability of various Company programs and contract provisions relating to force adjustment plans and procedures, as well as the feasibility of job displacement training programs. The Company is willing to meet at your earliest convenience.

Santos also advised that the Springfield EVRC closing would be delayed until mid-year. The parties did, eventually, meet, and the Company did take several steps to afford affected employees their preferred options among those that were available, including, for some, a work-at-home arrangement; for others, a cash payout; for some, relocation to Providence; for others, positions in other Locals in Massachusetts. In fact, the closings did not occur for seven months after the January announcement.

Rulings

The Company did not violate Article X, Section 3 of the 2012 MOU by directing all Massachusetts calls out of state.

While the Company maintains the management right to close centers, the Company did violate the letter and spirit of Article XX, Attachment 3 of the 2012 MOU (as modified by the September 11, 2012, Letter Agreements when it *immediately* announced the closing of the centers at issue after purportedly completing the initial staffing.

The Company did not violate Article G26 of the collective bargaining agreement.

Remedy

The parties have reached an agreement regarding the remedy in this matter.

By the Board:

Roberta Golick, Esq., Chair

John Rowley, for the Union

Joseph Santos, for the Company

Date: June 3, 2014